

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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FILE:

B-215505

DATE: February 19, 1985

MATTER OF:

Effective Learning, Inc.--Request for  
Review of Prior Claim Decision

## DIGEST:

1. In general, anticipated profits are not recoverable even in the presence of wrongful government action. Specifically, GAO knows of no situation where anticipated profits may be recovered when the underlying claim is based upon equitable, rather than legal, principles.
2. Interest is not recoverable against the United States unless it is expressly authorized by statute or by contract. This rule thus does not permit the payment of interest when the claimant has been allowed a partial recovery from the government under the equitable theory of quantum meruit.

Effective Learning, Inc. requests review of our prior decision on the firm's claim against the Veterans Administration (VA) for media editorial services performed without a contract for the VA Medical Center, Northport, New York, at the behest of an official of the Center who lacked contractual authority. In our decision, B-215505, July 26, 1984, we allowed Effective Learning a partial recovery in the amount of \$2,394.08 on a quantum meruit basis.

Although Effective Learning had claimed \$6,000 for the work performed, we found documentary evidence in the record only to support the firm's direct labor costs amounting to \$3,000, which represented the compensation paid to two independent editorial writers retained by the firm for the work. In addition, since Effective Learning's president and a staff member had been directly compensated by the VA in the form of salaries totalling \$605.92, which

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had been paid to them while serving as temporary employees at the Center (an amount which had inured to the firm), we accordingly reduced the firm's quantum meruit recovery to \$2,394.08.

Effective Learning expresses dissatisfaction with our July 26 decision, and now asserts that:

- (1) the firm is entitled further payment on a quantum valebant rather than a quantum meruit basis;
- (2) the firm should be paid not only its direct labor costs, but also other expenses such as typing costs, telephone charges, copying costs, overhead, and general and administrative expenses;
- (3) the firm is entitled to recovery of its anticipated profits; and
- (4) the government is obligated to pay interest on the \$2,394.08 that has already been remitted to Effective Learning.

We find no merit in Effective Learning's present assertions.

The theory of recovery on either a quantum meruit or quantum valebant basis is founded on the equitable principle that the government should not retain a benefit without paying for it. TMG & Partners, Architects, B-206077.2, June 14, 1982, 82-1 CPD ¶ 576. The term quantum meruit means the reasonable value of work or labor, whereas the term quantum valebant is defined as the reasonable value of goods sold and delivered. Since the media editorial services performed by Effective Learning are services by their very nature and not goods (even though some portion of the services may have been reduced to writing), recovery on a quantum meruit basis is proper. See Blodgett Key punching Company, 56 Comp. Gen. 18 (1976), 76-2 CPD ¶ 331.

Although Effective Learning asserts that it should be paid its incidental expenses with respect to the work actually performed beyond its direct labor costs, we found no documentary evidence in the record of any such expenses,

and none is provided in its present request for review. Without such evidence, it is impossible to determine whether these expenses are in fact recoverable on an equitable basis, or even what the amount claimed may represent in monetary terms. Given the firm's clear failure to carry its burden of proof in this regard, we find no basis upon which to revise our July 26 decision. See GAO's Claims Procedures at 4 C.F.R. §§ 31.7 and 32.2 (1984).

Effective Learning's assertion that the government is obligated to compensate the firm for its anticipated profits, and to pay interest on the \$2,394.08, is without merit.

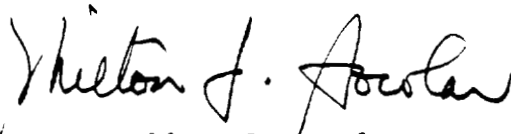
As a general rule, anticipated profits may not be recovered even in the presence of wrongful government action. See Dillingham Construction Co., Inc., B-205588, May 6, 1982, 82-1 CPD ¶ 432. Specifically, we know of no situation where anticipated profits may be recovered when the underlying claim is based upon equitable, rather than legal, principles. See 27 Am. Jur. 2d Equity § 112 (1966). Here, since a contract between the government and Effective Learning never came into being, the only relief possible was equitable in nature. Hence, the monetary recovery in this situation was limited to the reasonable value of services and did not encompass any potential profits that might have been earned by Effective Learning.

Furthermore, interest is not recoverable against the United States unless it is expressly authorized by statute or by contract. United States v. Thayer-West Point Hotel Co., 329 U.S. 585 (1947). Although the payment of interest is required under section 12 of the Contract Disputes Act of 1978, 41 U.S.C. § 611 (1982), the Act only contemplates claims "relating to" a contract. 41 U.S.C. § 605(a). As we have already pointed out, there was never a contract between the government and Effective Learning, and, accordingly, the provisions of the Act do not apply, and no interest is due. See Pathfinders Institute, et al., B-212984 et al., Feb. 3, 1984, 84-1 CPD ¶ 145.

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Therefore, we find no grounds upon which to question the propriety of our July 26 decision on the claim, which is affirmed.

Sincerely yours,

*for*   
Comptroller General  
of the United States